



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV - 5 2015

Avi Z. Fertig

Woodmere, NY 11598

RE: MUR 6799

Dear Mr. Fertig:

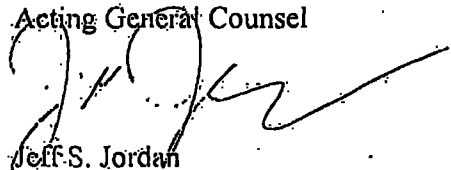
The Federal Election Commission reviewed the allegations in your complaint and its supplement received on March 21, 2014 and March 24, 2014, respectively, concerning Frank Scaturro and Frank Scaturro for Congress and John F. Craven, in his official capacity as treasurer. On October 15, 2015, based upon the information contained in the complaint and its supplement, and information provided by the respondents, the Commission decided to dismiss the allegation that Scaturro for Congress and Nancy Collier, in her official capacity as treasurer, violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1), (b)(1), and (c)(2)(i) – (iii). On the same date, the Commission found that there is no reason to believe Frank Scaturro violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations. Accordingly, the Commission closed its file in this matter on October 15, 2015.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel’s Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission’s findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission’s dismissal of this action. See 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

Sincerely,

Daniel A. Petalas
Acting General Counsel

BY: 
Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Frank Scaturro for Congress, **MURs 6799 & 6842**
4 and Nancy Collier as treasurer,¹
5 Frank Scaturro
6

7 **I. INTRODUCTION**

8 These matters were generated through two complaints filed with the Federal Election
9 Commission by Avi Z. Fertig and Theresa Gaffney, respectively, alleging violations of the
10 Federal Election Campaign act of 1971, as amended (the "Act"), by Frank Scaturro and Frank
11 Scaturro for Congress² and Nancy Collier in her official capacity as treasurer (collectively the
12 "Committee"). For the reasons set forth below, the Commission elects to exercise its
13 prosecutorial discretion to dismiss the allegations that Frank Scaturro for Congress and Nancy
14 Collier in her official capacity as treasurer failed to include the appropriate disclaimers on its
15 flyers, email communications, and website as required under 52 U.S.C. § 30120(a). The
16 Commission also finds no reason to believe that Frank Scaturro violated the Act and
17 Commission regulations.

18 **II. FACTS**

19 **A. MUR 6799**

20 Complainant Avi Z. Fertig alleges that the Committee violated the disclaimer provisions
21 of the Act and Commission regulations with respect to seven communications produced and

¹ John F. Craven was the treasurer of record for Frank Scaturro for Congress at the time the Complaint was filed. Nancy Collier is the Committee's current treasurer. See Amended Statement of Organization, Frank Scaturro for Congress (June 9, 2014).

² The Committee is the principal campaign committee for Frank Scaturro, a 2014 candidate for New York's Fourth Congressional District.

distributed during the 2014 election cycle.³ The Complaint first alleges that the Committee produced and distributed an email, sent March 7, 2014 ("March 7th Email"), and an announcement on the Committee's website ("Website Announcement"), which lacked proper disclaimers. Compl. at 1, Ex. A; Supp. Compl. at 1, Ex. B (Mar. 24, 2014) ("1st Supp. Compl."). The March 7th Email appears to be an invitation to a fundraiser, sent with the subject line, "Invitation: March 19th Spring Gala Fundraiser for Frank Scaturro." Compl. at Ex. A. The body of the email contains information about the fundraiser and includes the candidate's logo, website URL, and, at the bottom, the words "Frank Scaturro for Congress" alongside the Committee's address. *Id.* The Website Announcement is a combination of text and graphics displayed on the Committee's website that similarly invited viewers to the March 19th fundraiser. 1st Supp. Compl. at Ex. B. A printout of the website shows a graphic reading "Frank for Congress" at the top, followed by a second graphic with information about the fundraiser, text about how to donate to the Committee, and an interactive feature that allowed visitors to RSVP to the fundraiser. *Id.* The very bottom of the website contains a printed box containing the words "Paid for by Frank Scaturro for Congress, Inc." *Id.*

Complainant further alleges that the Committee produced and distributed a second email, sent March 18, 2014 ("March 18th Email"), and four printed flyers that lacked proper disclaimers. 1st Supp. Compl. at 1, Ex. A; Supp. Compl. at 1, Exs. A-D (Apr. 1, 2014) ("2nd Supp. Compl."). The Complainant asserts that both the March 7th and March 18th emails were sent to more than 500 individuals, though he does not provide any documentation that supports this allegation. Compl. at 1; 1st Supp. at 1. The March 18th Email appears to be another invitation to the March 19, 2014 fundraiser, containing a graphic with information about the

³ See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11.

1 event. 1st Supp. Compl. at Ex. A. The graphic contains the text “Paid for by Frank Scaturro for
2 Congress” at the bottom, and although the text is offset from the rest of the invitation, it is not
3 contained within a printed box. *Id.* The four flyers, which advertise a volunteer opportunity, a
4 March 27, 2014 fundraiser, or an open house at the Committee’s headquarters, all contain the
5 words “Paid for by Frank Scaturro for Congress” at the bottom in a contrasting color. 2nd Supp.
6 Compl. at Exs. A-D. However, the text is not contained within a printed box. *Id.*

7 Respondents concede that the March 7th Email lacked a disclaimer, stating that the
8 Committee had paid for the communication, but argue that the content and circumstances of the
9 communication made it clear to the public that Respondents had authorized and paid for the
10 communication. Resp. at 2. Respondents note that the email, which was an invitation to a
11 fundraiser for Scaturro’s campaign, contained the Committee’s logo, included the URL of the
12 Committee’s website, and provided the Committee’s name and mailing address. *Id.*

13 Respondents also do not dispute that disclaimers on the March 18th Email and four other
14 flyers were not contained within a printed box, but argue that such a complaint “elevates form
15 over substance,” and that the disclaimers clearly identified who approved and paid for the
16 communications. *Id.* at 3. They note that the disclaimers, all of which read “Paid for by Frank
17 Scaturro for Congress,” otherwise meet Commission specifications, containing the appropriate
18 language, appearing in sufficient size and color contrast, and standing alone from other text and
19 graphics. *Id.* at 3-4.

20 With respect to the Website Announcement, Respondents dispute the fact that a
21 disclaimer was not included, since a compliant disclaimer was present at the bottom of the
22 website. *Id.* at 2-3.

B. MUR 6842

Complainant Theresa Gaffney does not address the same communications raised in MUR 6799, but instead points to a separate mailing ("Mailing"), which she alleges was produced and distributed by the Committee without a disclaimer. Compl. at 1, Ex. A. The Mailing, a copy of which is included with the Complaint, is a photocopy of a handwritten letter on what appears to be the Committee's letterhead. Compl. at Ex. A. The Mailing is a first-person letter advocating for Scaturro's election, apparently signed by Scaturro himself. *Id.* The letter does not contain a disclaimer. *Id.* Complainant Gaffney asserts that Scaturro, who has sought election to Congress three times, is an experienced candidate who should "know federal election law by both chapter, line and verse." *Id.* at 1. She states that Scaturro's failure to comply despite such experience demonstrates that he is "willfully violating" the Act. *Id.*

Respondents do not dispute that the Mailing lacked a disclaimer, but rather assert that the content and circumstances surrounding the communication clearly show that the Respondents had authorized and paid for the letter. Resp. at 2. Respondents also note that the Mailing was on campaign letterhead, and was handwritten and signed by Scaturro himself. *Id.* at 2. Further, Respondents contend that the error was not willful, as alleged, but rather a mistake on the part of committee volunteers. *Id.* Respondents state that the campaign realized, within three days of the initial mailing, that the letter lacked a proper disclaimer. Thereafter, the Respondents sent out another set of letters, which contained the "paid for" language required under the Act. *Id.* at 2, Ex. A.

I. LEGAL ANALYSIS

A political committee that makes an expenditure for a public communication must include a disclaimer stating that the Committee paid for and authorized the communication. 52 U.S.C. § 30120(a); *see also* 11 C.F.R. § 110.11(a)(1) and (b)(1). A public communication is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 52 U.S.C. § 30101(22); *see also* 11 C.F.R. § 100.26. The same requirement applies when a political committee makes expenditures for more than 500 substantially similar email communications or Internet websites of the committee that are available to the general public. 11 C.F.R. § 110.11(a)(1) and (b)(1). The Commission has established specifications for the content and appearance of all disclaimers. *See* 11 C.F.R. § 110.11(b)-(c). Communications paid for and authorized by a candidate’s authorized committee must clearly state that the committee paid for it. 11 C.F.R. § 110.11(b)(1). Additionally, the Commission has set forth technical requirements concerning all printed communications containing a disclaimer. These requirements include: the disclaimer must be of sufficient type size to be clearly readable by the recipient, be contained in a printed box set apart from the other contents of the communication, and be printed with a reasonable degree of color contrast between the background and the text. 11 C.F.R. § 110.11(c)(2)(i)-(iii).

It appears that the Committee failed to affix appropriate disclaimers on its March 7th Email and the Mailing by not including a statement that the communication was authorized and paid for by the Committee. However, the communications contained information identifying them as Scaturro campaign communications and, therefore, were unlikely to have misled the

1 public. Moreover, when the campaign discovered its omission on the Mailing, it promptly
2 remedied the oversight before the Complaint was filed.

3 The exhibits attached to the Complaint indicate that the March 18th Email and four flyers
4 lacked a printed box around the disclaimers. As is the case with the March 7th Email and
5 Mailing, the March 18th Email and flyer communications were unlikely to have misled recipients
6 due to the indentifying information included in the communications. With respect to the
7 Committee's website, it clearly contained a statement that the Committee had paid for the page
8 and there was little ambiguity as to who was responsible for the graphics and announcements
9 that appeared thereon. Finally, evidence suggests that the failure to include a disclaimer on the
10 Mailing was the result of inadvertence on the part of campaign volunteers and there is no
11 available information to indicate that Scaturro knowingly and willfully violated the Act.

12 Accordingly, further Commission resources are not warranted in this matter and,
13 consequently, the Commission chooses to exercise its prosecutorial discretion and dismiss the
14 allegation that Scaturro for Congress and Nancy Collier, in her official capacity as treasurer,
15 violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1), (b)(1) and (c)(2)(i)-(iii). *See*
16 *Heckler v. Chaney*, 470 U.S. 821 (1985). In addition, the Commission finds no reason to believe
17 that Frank Scaturro violated the Act or Commission regulations.